

EXHIBIT 1

**LG Philips LCD Co., LTD v.
Tatung Company, et al.**

**Hearing
November 16, 2005**

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE
LG PHILIPS LCD CO LTD.,
Plaintiff,
)
) C A NO: 05-292 JJF
v
TATUNG COMPANY, TATUNG
COMPANY OF AMERICA, INC.,
CHUNGWA PICTURE TUBES LTD.,
and VIEWSONIC CORPORATION,
Defendants
)
United States District Court
844 King Street
Wilmington, Delaware
Courtroom 4B
Wednesday, November 16, 2005
2:30 p m
BEFORE: THE HONORABLE JOSEPH J FARNAN, JR
United States District Court Judge
APPEARANCES:
RICHARD D KIRK, ESQ
THE BAYARD FIRM
and GAP BONO, ESQ
McKENNA, LONG & ALDRICH
For the Plaintiff
ROBERT W WHETZEL, ESQ
and MATTHEW W KING, ESQ.
RICHARDS, LAYTON & FINGER
and
CHRISTINE A DUDZIK, ESQ
HOWREY, LLP
For the Defendants

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[1] THE COURT: Be seated, please. Good [2] afternoon.

[3] MR. WHETZEL: Your Honor, if I [4] would begin with introductions. Robert Whetzel [5] appearing for the defendants. It's my pleasure [6] to introduce the court Christine Dudzik from [7] the Howrey firm, my co-counsel. Your Honor may [8] know Mr. King from my office as well.

[9] THE COURT: Good afternoon.

[10] MR. KIRK: Good afternoon, Your [11] Honor. Richard Kirk from the Bayard Firm for [12] the Plaintiff, LG. Philips Ltd. Company [13] Limited. I am here today with Gap Bono from [14] the firm of McKenna, Long and Aldrich in [15] Washington.

[16] THE COURT: Thank you. Good [17] afternoon.

[18] I got your papers and some letters. [19] And essentially what we're here about is the — [20] now that service has been accomplished, the [21] plaintiff's motion for a preliminary [22] injunction, which the defendant has asked for [23] some additional time. So, in essence, we're [24] here on defendants application for the

say for the local [11] counsel has said that we needed to prepare for [12] the declarations that we need to prepare to [13] show the invalidity basis for the patent in [14] suit.

[15] They have claimed that they're [16] entitled to a presumption of validity in this [17] case, which is one of those standards for the [18] preliminary injunction. We have evidence and [19] have found substantiated proof that there are [20] documents showing that the patent is invalid [21] under 102(b) for on sale bar. We are working [22] up that evidence. Most of that documentation, [23] however, is located in China and Taiwan because [24] the defendant, CPT and Tatung, are both Taiwan

time is [16] reasonable.

[17] We also on top of that, just to [18] show some of the work that needs to be done to [19] respond to this, we do believe and we've been [20] told by Tatung USA that they quit supplying [21] this specific product that is subject to this [22] injunction in 2003, that they are no longer [23] supplying it to the United States.

[24] Whether or not third parties have

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[1] that product that's still being sold, we're not [2] — we can't substantiate that yet. But as far [3] as Tatung is concerned, they are no longer [4] supplying it in the United States.

[5] As far as Viewsonic is concerned [6] with their specific product, we have been [7] informed by the client that they quit [8] incorporating the CPT monitor into their [9] product a while back and it's no longer being [10] sold with the CPT panel in it.

[11] In fact, two of the panels that are [12] being sold in that monitor, actually have an [13] approved sale from the plaintiff themselves to [14] put into the monitor the infringing — [15] allegedly infringing monitor.

[16] So there's a lot of factual work up [17] that needs to be done, and the two month time [18] period I think is the time that we will be able [19] to rebut the showing of irreparable harm and [20] we'll be able to rebut the showing of presumed [21] validity of the patent.

[22] THE COURT: The two accused [23] products which are the subject of this lawsuit?

[24] MS. DUDZIK: No, there's a --

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[1] THE COURT: Of this motion?

[2] MS. DUDZIK: This motion we have [3] found out they have alleged two specific [4] products.

[5] THE COURT: Do you contest the [6] infringement claims against those two products?

[7] MS. DUDZIK: Yes, we will be [8] contesting infringement on that.

[9] THE COURT: But the client tells you [10] they stopped selling?

[11] MS. DUDZIK: Yes, they stopped [12] selling it. The specific model, the Tatung [13] model, I believe it's the L17AMTN, which is [14] also the monitor, if Your Honor recalls, in the [15] other pending suit in front of Your Honor that [16] was the subject of a preliminary injunction [17] that you entered an order earlier this year [18] denying injunction on that monitor. It's the [19] same monitor.

[20] THE COURT: Now, if we're dealing [21] only in the context of the preliminary

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[1] additional time.

[2] MS. DUDZIK: Good afternoon, Your [3] Honor. We are asking for a two months [4] extension of time in which to file our [5] responsive brief to the preliminary injunction [6] motion.

[7] We believe that this time is [8] reasonable and necessary to formally prepare [9] the papers that we need to respond to the [10] motion. Particularly to

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[22] injunction motion and you're contesting [23] infringement but you don't — you represent [24] that you don't sell them any longer in the

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[11] United States, is your client prepared to enter [2] into an order that says that they don't and [3] won't sell them in the United States?

[4] **MS. DUDZIK:** No, I think the issue [5] is a little broader than that. I don't think [6] it's possible to do that because as far as [7] Viewsonic is concerned, they are selling the [8] product. They are not selling the product with [9] the CPT panel in it. They are a contract [10] manufacturer.

[11] **THE COURT:** The panel with the [12] accused product, are they willing to agree not [13] to sell that form of the product in the United [14] states?

[15] **MS. DUDZIK:** Well, in that [16] particular model they're not and they probably [17] could, but that doesn't resolve the lawsuit [18] because —

[19] **THE COURT:** No, because you still [20] got contributory negligence to face if you got [21] people running around selling thing you gave [22] them in 2003. I'm just trying to understand [23] what the real issues are in the preliminary [24] injunction motion. The rest of the world to

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[1] this lawsuit is something that the two of you [2] can argue about for the next 18 months.

[3] So I think the answer to my [4] question is no.

[5] **MS. DUDZIK:** No, that we —

[6] **THE COURT:** No that your client [7] won't enter into a consent order that says that [8] they will not — that says that they've stopped [9] and they won't, from this day forward, sell the [10] accused product either alone or in combination [11] with other products.

[12] **MS. DUDZIK:** No, I don't think it [13] works that way, the way it's structured, [14] because it's not just the product. They can't [15] say we're not going to sell the product. [16] They're going to have to do the next step [17] forward, that we won't incorporate this panel. [18] But that doesn't resolve the infringement [19] potentially of other suppliers of that panel. [20] We don't know they're going to try to allege [21] they're also infringement, so I think it's a [22] little more complicated to say that I won't do [23] that anymore.

[24] **THE COURT:** And your invalidity

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[1] defense is such that it focuses only on an on [2] sale monitor?

[3] **MS. DUDZIK:** That's the major one [4] we're pursuing right now. We believe there's [5] other invalidity.

[6] **THE COURT:** I'm not talking about [7] those. That's another universe.

[8] **MS. DUDZIK:** Right.

[9] **THE COURT:** I'm just talking about [10] in this preliminary injunction motion. The [11] only one I'm going to have to hear is the on [12] sale bar because you think that would defeat [13] the burdens that the plaintiff has on the [14] preliminary injunction?

[15] **MS. DUDZIK:** Well, at this moment [16] that's our major focus. We are, also, at the [17] same time, doing a prior art search on other [18] pieces of art that are on a 103 defense. We [19] have found some references; however, again, the [20] majority of the art is in Japan.

[21] **THE COURT:** But that's not what [22] you're asking me to grant you the extension [23] for?

[24] **MS. DUDZIK:** No, it is part of all

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[1] the same degree but the presumption of [2] validity. There's the 102 defense and there's [3] also the 103 defense. Right now we know for [4] sure we could go forward on the 102 defense. [5] By the time we should get our prior art search [6] done probably and translated in the next week [7] or two, there may be 103 art, also, that would [8] be part of our rebutting the presumption of [9] validity. [10] The problem with that, again, is [11] the translation problems. We have a stack of [12] prior patents that are all needed to be [13] translated and that's what's slowing us down. [14] I'm not going to say that we will find 103 for [15] sure in that translated bunch, but right now [16] that is still open.

[17] **THE COURT:** All right. Let me hear [18] from the plaintiff.

[19] **MR. BONO:** Thank you, Your Honor. [20] May it please the Court. I think there are [21] fundamentally two issues in front of the Court [22] today. One is the question of an extension of [23] time to respond to our preliminary injunction [24] papers. Separate I think from that is there

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[1] are separate requests for discovery, including [2] depositions, before they respond to our [3] preliminary injunction motion.

[4] The only thing I've heard counsel [5] say was their request to depose two of our [6] declarants. They have already served us with a [7] set of document requests on Monday, which I [8] assume that's part of their request for [9] discovery prior to responding.

[10] Let me address the extension of [11] time first, if I may, but I want to speak [12] separately to the discovery request. As far as [13] the extension of time concerned, we've already [14] had over two weeks since our motion was filed, [15] and I would submit the extension for another 60 [16] days is unreasonable.

[17] And while I'm not here saying there [18] shouldn't be a reasonable amount of time for [19] the defendants to respond, I think extending [20] this out another 60 days is not justified. And [21] if —

[22] **THE COURT:** You're not going to win [23] that argument, so help yourself and move on. [24] Because if I go the preliminary injunction

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[1] route, and I assume you've been through a [2] number of them. I've been through a number of [3] them. I've actually had blackout periods and [4] granted some, and, you know, it's a tough [5] review in the federal circuit on the grant of a [6] preliminary injunction, so it's very important [7] to moreso understand what the issues of the [8] injunction were, or the injunction application [9] were. More important to understand, how much [10] discovery, because you're going to have to [11] allow some, that you're going to allow, tie to [12] the issues or the breadth of the application [13] and getting it done in a manner that preserves [14] the integrity of preliminary injunctions and [15] doesn't convert them into essentially full [16] merit trials.

[17] So with my limited experience, [18] you've got to talk about what it is that you [19] want the breadth of the application to be. And [20] then I'll determine how much discovery, because [21] they're going to be entitled to some, they're [22] going to be allowed, and then we'll have the [23] issue of whether there's going to be a need for [24] evidentiary hearing or can we do it on the

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[1] papers. And I think that's a better [2] discussion.

[3] **MR. BONO:** Yes, Your Honor, and I [4] can go right to that.

[5] Your Honor, from what counsel said [6] as far as the issues are concerned, none of the [7] issues that were raised this morning that they [8] need to work on are issues that they need [9] discovery from LG, Philips on.

[10] **THE COURT:** No, I agree.

[11] **MR. BONO:** Thank you, Your Honor.

[12] **THE COURT:** The only issue that I [13] heard, because I'm not really paying attention [14] to the 103 art because it's too negligible. [15] The only thing I heard was about an on sale [16] bar. And I don't

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think they need discovery [17] from you on that at all. I would give them the [18] right to depose any declarant that you put in [19] place in support of your application.

[20] MR. BONO: Correct. Well, let [21] me — [22] THE COURT: Because they ought to [23] have a chance to probe the declarant.

[24] MR. BONO: I think the declarants

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[1] are separate, Your Honor, and let me explain. [2] As far as the Mr. Bohanan's declaration, I [3] think the Court should examine exactly what [4] Mr. Bohanan testified to in his declaration and [5] what he didn't in the context of this case.

[6] Mr. Bohanan testified that he [7] reviewed the patent and that he examined the [8] two products at issue that were purchased here [9] in Delaware. And in looking at the patent [10] claims and he set out his — the limitations [11] that he saw the patent and then compared that [12] to what he physically saw in the products and [13] then concluded that each of the limitations for [14] the claims he set out were there in the actual [15] products.

[16] This patent, we're not talking [17] about an overly sophisticated patent here. [18] It's something — it's a tape carrier package [19] that has what's called a dummy folding unit [20] which means there literally is a cutout of this [21] plastic that's attached to the LCD which [22] prevents there being light brightness [23] variations on the edges of the LCD display. [24] That's what it is. That's what the patent

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[1] addresses. It's a pretty simple patent given [2] the way patents are these days and it's [3] something that's either in their product or it [4] isn't. And he did a very common sense approach [5] to claim construction and he examined their [6] products and saw it and took pictures and he [7] said there it is. Here are all the pieces.

[8] Now, in that context I really don't [9] believe they need a deposition of Mr. Bohanan [10] because if the issues are going to be on the [11] claim construction items, they obviously will [12] put in an expert on their part to either [13] contest the claim construction or not. And I [14] think there will be many parts of the claim [15] construction that won't be contested. And in [16] doing that it will narrow the issues for the [17] Court. And of course the issue for claim [18] construction is for Your Honorto determine.

[19] So I really don't see that they [20] need Mr. Bohanan's deposition on claim [21] construction at this point until they put in [22] their own and we may find that

there's a [23] narrowing of issues or no issue on claim [24] construction. Both parties may agree, yes,

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[1] that's the appropriate claim construction or [2] the only dispute are these two limitations and [3] that can be presented to the court without [4] going through the time and expense of [5] depositions which obviously will go both ways [6] and delay this whole process considerably.

[7] With respect to the observation [8] that Mr. Bohanan made on the physical products, [9] I assume they know what their products have and [10] their experts know and they will either say, [11] yes, we have it, or, no, we don't have it.

[12] And, therefore, there's nothing to [13] be gained by taking Mr. Bohanan's deposition. [14] And we don't even know whether they'll contest [15] it. They may have to come in court and say [16] well, yes, we do have a tape carrier package [17] that has a dummy folding unit and it does, in [18] the purpose for which it's put there, is to [19] prevent variations in brightness on the edges [20] of the liquid crystal screen. We don't know [21] yet whether we even have any dispute.

[22] And certainly there's nothing to be [23] gained by taking Mr. Bohanan's deposition at [24] this point, which I would submit really is just

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[1] going to delay things on both sides. [2] So with respect to the other [3] questions of validity, even as to prior art, [4] Mr. Bohanan doesn't address any of that. He [5] did not present any issue of prior art or [6] invalidity. And whether they're selling it or [7] not, he of course has nothing to say on that.

[8] So I would submit at this point [9] there really is no need to take Mr. Bohanan's [10] deposition at this point in the procedure. [11] That I would respectfully submit that it would [12] seem to me to make sense, since it seems to be [13] most of the issues are something that is solely [14] within their ability to either they know it or [15] they're going to develop it on their own, that [16] whatever time Your Honor says is a reasonable [17] time for them to file their response, that they [18] should file their response and define for us [19] and for the Court what the issues really are [20] here in this case. Because I can see that [21] there may be an issue of claim construction or [22] they may very well not be, or might be a very [23] narrow issue.

[24] Same thing on the question of

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[1] infringement. They may have to

concede that [2] under our claim construction their product does [3] contain it and they do infringe. But under [4] their claim construction they do a different [5] one. Maybe it doesn't infringe.

[6] But until we see what their [7] arguments are, and I think it was clear from [8] counsel's argument this morning, they're still [9] developing their arguments and they're not [10] quite sure which way they're going to present [11] the case, whether they challenge claim [12] construction, whether they challenge [13] infringement, or whether they're going to go on [14] this alleged on sale bar to prevent our claim [15] from going forward, or whether or not they can [16] establish that they're no longer selling these [17] products or not. The fact that they may not be [18] selling this particular model is really of no [19] moment, because if they're selling other [20] products that contain the same tape carrier [21] package that infringes our patent, they're [22] still infringing and it really doesn't matter [23] that this particular model may have been [24] replaced with a new and improved model.

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[1] But until they define this for us, [2] I would submit that the question of deposition [3] should be held off until Your Honor can [4] determine, after their papers have been filed [5] and we've replied to it, what exactly are the [6] issues that the parties should now engage in [7] perhaps, deposition discovery, or maybe it's [8] totally unnecessary to go onto deposition [9] discovery because that is going to be a very [10] time consuming and expensive process. To do it [11] now, it's going to be open ended. It's not [12] going to be defined for the parties or for the [13] Court.

[14] Now, on the question of document [15] production, I will concede that I don't have a [16] problem. When they initially approached me [17] with request for discovery it was totally open [18] ended and to that I've said I didn't agree to [19] it. But now that I've seen their document [20] request that they served on Monday, I will [21] agree that we will respond to that document [22] request. Basically they've asked us for [23] documents —

[24] THE COURT: If there is multiple

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[1] models and you have a preliminary injunction, [2] the subject of which is two models, what does [3] the preliminary injunction do for you?

[4] MR. BONO: Your Honor, I don't know [5] whether they're still selling it or not. I [6] submitted evidence to the Court when I got [7] their letter for the first time on Monday that [8] they claim that they

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may not be selling it.

[19] THE COURT: Let's assume they're [10] not selling it but they're selling five other [11] models that are infringing but your preliminary [12] injunction doesn't address those other five.

[13] MR. BONO: I assume that after the [14] papers are submitted we have to address this [15] issue with the Court and whether we have to —

[16] THE COURT: Then you're wasting my [17] time.

[18] MR. BONO: To our knowledge these [19] models are still being sold, Your Honor. We've [20] looked at it yesterday and we determined that [21] the models are still being sold.

[22] THE COURT: But you understand that [23] you can only have an application that's [24] directed at not a moving target but a

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[1] stationary target. The target you've chosen [2] are two models, one each from the defendants?

[3] MR. BONO: Yes, Your Honor. One [4] from Tatung and one Viewsonic, yes, which both [5] contain a CPT module, yes, Your Honor. And to [6] our knowledge —

[7] THE COURT: That's all you're [8] litigating in the preliminary injunction [9] application?

[10] MR. BONO: Yes, Your Honor. [11] Without having any further information, yes.

[12] THE COURT: So you're saying [13] without further information then you don't [14] really have the need for preliminary [15] injunction.

[16] MR. BONO: No, Your Honor. To our [17] knowledge those products are still being sold [18] in the US market, yes.

[19] THE COURT: Well, let's assume that [20] they're selling those two and let's assume [21] they're selling ten other models. Your [22] application is only directed to two. The other [23] ten won't be subject to any order of the court, [24] so what have you gained? Unless you're trying

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[1] to develop an immediacy in your litigation, [2] then you should be asking for something else. [3] But if it's not going to foreclose them from [4] infringing of your patent claims, what do you [5] gain? That's what I don't understand.

[6] MR. BONO: Your Honor, I don't have [7] sufficient information as to their other models [8] to address that question of the Court. We [9] don't have it at this point. Whether they have [10] other models will infringe or not, I don't [11] know.

[12] THE COURT: If I were them, I [13] wouldn't tell you about them in the context of [14] the preliminary injunction application either. [15] I would understand if I was on the other side [16] of you that all you asked for are these two [17] models to be enjoined.

[18] MR. BONO: I understand, Your [19] Honor.

[20] THE COURT: And save all the rest [21] for later.

[22] MR. BONO: For another day.

[23] THE COURT: That's what later is, [24] another day.

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[1] MR. BONO: Yes, Your Honor.

[2] THE COURT: Tell me this, I know [3] you're frustrated because I read your papers, [4] that you think they engaged in delay on the [5] other side of the case and you think that they [6] are doing that repeatedly in the central [7] district in California and the way they handled [8] the service delay here and in other ways.

[9] And so when you sat down, is that [10] what made you think that a preliminary [11] injunction would be a good idea? Because is it [12] the delay frustration that they're still out [13] there selling and you're not able to get them [14] into a final decision? Because there are other [15] recommendations if that's what you're trying to [16] convince me of.

[17] MR. BONO: No, that was not part of [18] our thinking as far as seeking the preliminary [19] injunction. But as far as our opposition to [20] their claim for the extension and for [21] deposition discovery, yes, that's part of my [22] thinking because I know their game plan.

[23] And I can guarantee to this court [24] as sure as we're sitting here this afternoon,

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[1] that if you grant them deposition discovery, [2] the preliminary injunction motion will be here [3] next June and it may still not be ready for the [4] Court's decision. Because in terms of [5] scheduling, because I know they'll want to [6] schedule Mr. Bohanan's deposition and we have [7] to work to do that and there will be delays on [8] that. And then when they put in their expert, [9] I'll have to run him around to try to get a [10] time when they are available to produce him. [11] There will be further delays. And every time [12] they put in a declarant. And it will be six [13] months from now and they still will not have [14] filed their opposition to this PI motion.

[15] Because I can guarantee you that [16] something will happen and they'll file another [17] application to this Court because they've had a [18] track record of

it time and time again. They [19] do it in every case we've had against them. [20] And it's their modus operandi.

[21] And so my concern is I understand [22] the Court wants to make sure that there's an [23] adequate record on the preliminary injunction [24] motion and I understand that. And the Court

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[1] want to give them adequate time to develop the [2] defenses they've laid out for the Court. And [3] I'm willing to give them the document they've [4] requested in a reasonable time. We can produce [5] that in two weeks.

[6] THE COURT: Do you want discovery [7] against all the products they sell?

[8] MR. BONO: Your Honor, if they're [9] going to claim that these two products are no [10] longer being sold but they're being sold under [11] a different — but the real situation is [12] they're now being sold under a new product [13] number, a new model number, but it's really [14] essentially the same product, I think that [15] would be an inappropriate defense for this [16] preliminary injunction motion on their part [17] because they're real playing fast and loose [18] with what the point here is.

[19] The point here is we bought these [20] products that were being sold here in Delaware [21] right before we filed this lawsuit and they're [22] available in the market. Now they come in and [23] say, you know, we changed the model number on [24] these products so we're not selling these

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[1] anymore. Now we're selling the X5s. And low [2] and behold, I can virtually guarantee to the [3] Court that these other products that they're [4] now making have this tape carrier package with [5] the dummy package in it because that's the way [6] things are done now to remove this problem with [7] the brightness variation.

[8] And so what they're basically doing [9] is they changed the package of their product, [10] they put a little bit different model number, [11] maybe they moved the name "Viewsonic" from the [12] left side to right side, they put a little [13] different color gray on the way they package it [14] and say this is our new product so we no longer [15] sell the one you're seeking an injunction [16] against.

[17] I think that's inappropriate [18] because if essentially what's in their product [19] is the same thing, I think that it would be [20] fair for us, just like they want information [21] from us, that we be entitled to have the [22] information on their other products that [23] contain the tape carrier package and the dummy [24]

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folding unit in it so Your Honor can have a

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(1) full record on this motion.

(2) THE COURT: Now, the patent in suit (3) was issued about a year ago?

(4) MR. BONO: May of '04, I think. A (5) year-and-a-half ago.

(6) THE COURT: May of '04?

(7) MR. BONO: Yes, Your Honor.

(8) THE COURT: And the patents in suit (9) in California —

(10) MR. BONO: Those are separate (11) technology.

(12) THE COURT: I understand. What was (13) their issue dates, roughly?

(14) MR. BONO: Let me think for a (15) moment. One was —

(16) THE COURT: I'm trying to (17) understand the timing of the genre here, the (18) technology.

(19) MR. BONO: There are two different (20) classes of patents in the California case. One (21) deals with size mounting technology. The other (22) deals with semiconductor technology. I don't (23) know about the semiconductor.

(24) THE COURT: Are they post 2000

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(1) patents?

(2) MR. BONO: The size mount patent I (3) believe is '98. I really don't know about the (4) semiconductor patent. And there may be (5) continuations or there may be in the family of (6) the size mount patent there may be some issued (7) later. I don't want to be not lacked for the (8) Court's question.

(9) THE COURT: And how is the case (10) going in California. It doesn't seem to be (11) going too well in the papers.

(12) MR. BONO: It's scheduled for trial (13) February 28th.

(14) THE COURT: And when was it filed?

(15) MR. BONO: Three years ago.

(16) THE COURT: Three years ago?

(17) MR. BONO: I think, yes, Your (18) Hon. or.

(19) THE COURT: And did you get, as you (20) thought, did you get a lot of summary judgment (21) motions?

(22) MR. BONO: They've all been (23) recently filed, yes. Much.

(24) THE COURT: More than two?

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(1) MR. BONO: More than two.

(2) THE COURT: A lot?

(3) MR. BONO: Yes. Maybe a dozen or (4) so, yes.

(5) THE COURT: And there's a (6) magistrate judge assigned out there?

(7) MR. BONO: Yes, Your Honor.

(8) THE COURT: And who is it?

(9) MR. BONO: Magistrate Judge Lum.

(10) THE COURT: And who's the judge (11) that has the trial?

(12) MR. BONO: Judge Marshal.

(13) THE COURT: Where did you buy the (14) two products? You can't tell me?

(15) MR. BONO: Somewhere here in (16) Delaware but I don't know precisely. I can't (17) tell you the retailer we bought it from. I (18) just don't know. I could find out, but I just (19) don't know standing here.

(20) THE COURT: Just because if it's (21) like Best Buy it could mean that they're (22) selling them a lot of places, which would, you (23) know, mean that if there is infringement it (24) would be widespread as opposed to CB Joe's here

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(1) in Delaware or something.

(2) MR. BONO: I think it was fairly —

(3) THE COURT: I forget that guy's (4) name but there's one guy that just has one (5) shop.

(6) MR. BONO: I don't believe they (7) were bought from that kind of shop.

(8) THE COURT: CB Joe's. Okay. Well, (9) you sure have different views of where you are. (10) I do not mind conducting proceedings for (11) preliminary injunction if it has some (12) meaningful end. But if you want to litigate (13) with each other in that procedural framework, (14) the one thing I've learned it has to be very (15) tight. And sometimes the outcome — I'm trying (16) to think, I remember I had a catheter case, and (17) there were more catheters out there than the (18) ones that were the subject to preliminary (19) injunction, but it was all about getting the (20) market tied up. So we went through it, but it (21) turned out not to be that interesting.

(22) It's really not a lot of trouble (23) for me to put you on for argument, give you a (24) couple hours, and issue a decision. One way or

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(1) the other.

(2) The other side is when parties are (3) really in a furious battle for the marketplace (4) and the patent holder thinks that they're (5) dealing with a really difficult alleged (6) infringer and the alleged infringer thinks (7) they're dealing with a really difficult patent (8) holder who slopped through the patent and (9) trademark office, used all the inadequacies of (10) that office to get these patents issued and (11) they just feel

they're being put apart, then (12) they hire lawyers and they let them battle out (13) three, four, five, six, seven years in court.

(14) If that's what's going on, there (15) are other remedies that we can take to get you (16) to the federal circuit rather quickly, unless (17) there's really a lot of bad faith on both sides (18) and then you just get tied up and it doesn't (19) help you.

(20) It sounds to me in this case that (21) really what you want is as quick as possible (22) final judgment. But you seem to think what you (23) really want is a preliminary injunction against (24) two products. I'm not going to tell you what

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(1) you want, but I'm going to give you the options (2) that I'm willing to preside over. And they are (3) this, you have a preliminary injunction — you (4) can sit down so you can take some notes on this (5) and ask questions at the end. I'll give you (6) the broad outline.

(7) If it's a preliminary injunction, I (8) would grant the extension for 60 days and I (9) would allow two depositions for each side. The (10) infringement claim would be limited to the two (11) products that are cited. And the invalidity (12) would be limited to a section 102 on sale bar, (13) which is very specific. You'd have to have (14) evidence that they're out there, that they did (15) it a year before. And that's all the (16) preliminary injunction would deal with.

(17) And then we'd enter a scheduling (18) order. And because you got the benefit and (19) jumped ahead of the other 60 some patent cases (20) I have for the preliminary injunction, you (21) would go on the long end of the trial spectrum, (22) somewhere in the range of two years after we (23) got done with the preliminary injunction (24) hearing.

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(1) So if we had that hearing in (2) February for the present application, 2006, (3) February 2006, the full merits case wouldn't be (4) heard until some time in late 2007 or early (5) 2008.

(6) The other option is that — have (7) you seen this bill? There's a bill floating (8) around. I didn't know about it until I went to (9) this thing to talk in Arizona and then another (10) one of the judges went somewhere and they were (11) talking about it. There's a senate bill (12) floating around, I forgot the number of it, a (13) United States senate bill, that said there's a (14) lot of judges that don't like patent cases. I (15) guess that's what it says, sort of. And it (16) says there's a lot of lawyers that do, and a (17) lot of businesses.

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(18) And so what they want to do is (19) they're going to target --- they're going to (20) have some pile districts or something, if it (21) ever gets past, and what they want to do is (22) they want to put patent cases, because of all (23) the global implications, on the ITC time frame. (24) But only select judges would be allowed to hear

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(1) or try patent cases in the district courts

(2) And they might designate a whole (3) district on they might just designate certain (4) judges in certain districts. And then -- of (5) course we would lobby against that happening in (6) Delaware. We would want to be on the opt out. (7) That's a joke.

(8) And then essentially one of the (9) things they want to do is they want to do it in (10) the eastern district of Virginia because (11) somebody thinks it's a good idea to have 90 (12) days of discovery in a patent case no matter (13) how many claims, no matter how many whatever (14) and all this other stuff. And they're really (15) serious about this and it's being put forth by (16) the patent bar through that Sedona group out in (17) Arizona. I actually went to Sedona when I was (18) out there because I figured there had to be (19) something going on there for these ideas to be (20) floating out of there. There's like people (21) standing in the middle of the street with like (22) antennas. It's crazy.

(23) But, anyway, my bottom line is (24) we've offered that here before. I offered in

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(1) my scheduling letter nine months if you don't (2) want a jury. You can have a decision in nine (3) months. I can do that with a jury and that's (4) the option I'd offer you.

(5) If you want to, if either one of (6) you want to be out of here with a final (7) judgment order in nine months as opposed to (8) going through the preliminary injunction that's (9) filed; in other words, it would just be (10) withdrawn, and I would put you on a schedule (11) that everything that would get you to the (12) federal circuit would be done nine months from (13) this month. So what's that? August.

(14) So since it would take some time, (15) let's say by September 2006 you'd have a final (16) order, all post trial motions, everything would (17) be resolved and you'd be in the federal (18) circuit, if you want to do that. So they're (19) your options.

(20) A very rigid preliminary injunction (21) which will push you out because you

jumped (22) ahead of the other people and take up more time (23) in the other cases, or if you want to just get (24) a little push or expedited trial schedule I'll

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(1) allow you to jump a little bit ahead of the (2) line, but getting you out of here in nine (3) months. And we'd have to have a discussion (4) again because that would be a serious schedule. (5) We'd have to have another get together in (6) person where we would set the schedule that (7) would get you out of here in nine months. So (8) you're probably looking at a, in that instance, (9) probably at a June trial, June 2006 trial.

(10) But I think that's a fair — I (11) shouldn't say that because that's being modest, (12) but that's a fair way to deal with these kind (13) of issues and it kind of addresses what they're (14) trying to do with this legislation.

(15) I'm not sure if it's workable when (16) you have 60 patent cases assigned to every (17) judge, and of course if you had specified (18) judges they might be carrying a case load of (19) 120. I don't know if people understand how (20) much work it is to get through a patent case, (21) for the lawyers first and then for the court.

(22) Now, you don't have to agree on (23) this. I would listen to both sides as to both (24) options. And then after I heard you, I would

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(1) decide which one made the most sense based on (2) what you wanted to do with the case. And then (3) I would then decide whether you got a (4) preliminary injunction or the nine month (5) federal circuit date. You don't have to decide (6) today.

(7) MR. BONO: Can I ask one question?

(8) THE COURT: Yes.

(9) MR. BONO: Was that with or without (10) a jury or either?

(11) THE COURT: Either way.

(12) MR. BONO: Just didn't know if you (13) were —

(14) THE COURT: No. What I was (15) referencing, in my Rule 16 letter I tell you, (16) and if it's a patent case, that if you want to (17) be out of here in nine months and you're (18) willing to waive the jury, I'll do that. (19) Because it's you know what one of the biggest (20) time consumers is, post trial motions. So if (21) you take that out of it, I'm willing to get you (22) out of here in nine months.

(23) I'm willing to do that for you even (24) with a jury in this case. But I'll be a lot

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(1) harder on you in the preparation of

the (2) scheduling order, you know, where I'm a little (3) more progressive. Typically in the scheduling (4) order I give you a little more leeway. You (5) have to really nail down the issues real early (6) by contention. I'm going to really put your (7) feet to the fire. And I'd spend some time with (8) you in a conference and then maybe one more (9) follow-up to be sure what you're doing and send (10) you out. Start with document discovery on a (11) very fast pace.

(12) And it's very likely that you would (13) engage a — after I talk to you more, I'm not (14) sure yet, I might engage a special master for (15) you since you have a lot of disputes. You (16) don't seem to get along. I don't know why. (17) You seem like nice people.

(18) You seem to — maybe it's your (19) clients driving you to be nasty to each other. (20) You seem nice here. But if I thought you were (21) a little contentious just so you could get (22) quick decisions, I would get you — put you on (23) a special master track.

(24) So you'd get out of here in nine

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(1) months with a final order and it could be a (2) jury trial. The jury trial would be some time (3) in around like June of 2006.

(4) Do you have any other questions (5) about the options?

(6) MR. BONO: No, Your Honor. I (7) understand. Do you want comment from us or —

(8) THE COURT: Well, I think you ought (9) to talk to your client, and maybe to each (10) other, and maybe you could actually agree. (11) Wouldn't that be a beautiful thing if you could (12) just agree with each other.

(13) I've decided lawyers have a hard (14) time, particularly in these cases that are (15) contested.

(16) Do you have any questions about it?

(17) MS. DUDZIK: I don't think right (18) off the bat, but I just wanted to bring to the (19) attention there is another patent involved in (20) this lawsuit.

(21) THE COURT: Oh, yeah. Here's what (22) I would also do, if there's two patents, let's (23) say that they get crazy and they insert a host (24) of claims, I'd make them go to representative

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(1) claims. Which I found out when I was at that (2) conference, one of the other people was Judge (3) Rader and he said that's a good thing and the (4) federal circuit doesn't mind district courts (5) doing that. He reinforced it the way he spoke (6) to these folks.

(7) So if they tried to be (8) unreasonable, we'd get it narrowed so we know (9)

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exactly that it's a reasonable approach and not [10] just shot gunning you. And the same thing with [11] invalidity defenses, you know, you can't have [12] every picker in the fence. You're going to [13] have to pick two, three most, because we have [14] to have discrete discovery so you can get at [15] what you want to get at. [16] This is the real lawyer program. [17] You can't just be a litigator to get either of [18] these options.

[19] Do you have any other questions?

[20] MS. DUDZIK: When do you want our [21] answer?

[22] THE COURT: I want you to talk. I [23] would appreciate you talking with each other. [24] If you could agree to it, it would be a good

bring it to the week of the seventh. Do you [19] want to come in on the tenth, which is a [20] Thursday?

[21] MR. BONO: That's fine.

[22] THE COURT: And so let's have you [23] come in at eleven o'clock.

[24] Where are you coming from?

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[1] MS. DUDZIK: Chicago. Later would [2] be perfect.

[3] THE COURT: I'm sorry. We'll [4] definitely do that for you.

[5] And where are you?

[6] MR. BONO: Washington.

[7] THE COURT: So let's make it at one [8] o'clock, that way you can get in in the morning [9] and get here and then get out by the end of the [10] day.

[11] MS. DUDZIK: Great.

[12] THE COURT: One o'clock on Thursday [13] the tenth and you'll tell me by next Monday [14] you'll know what option so you can start [15] preparing what you'd like to be able to do in [16] the option I've given you before you get here.

[17] MR. BONO: Your Honor, I think you [18] were looking at the wrong month.

[19] THE COURT: I was. I'm sorry. The [20] week of the fifth, so that would make it [21] December the 8th and we'll make it at I have a [22] one o'clock already on that day, so we'll make [23] it at 1:30 on the eighth, that's a Thursday, [24] December 8th.

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[1] Just tell me, I have some idea, but [2] everybody here has a lot of associates and [3] other partners in their law firms? There's [4] nobody here that's practicing with just two [5] other people? That's good because that [6] means --

[7] MR. BONO: Your Honor, sometimes [8] I'm sure with Christine, we sometimes often [9] feel that way that we're practicing with only [10] one or two other people.

[11] THE COURT: Well, the bad news is I [12] just looked at the total letterhead. That [13] allows me to be -- I keep hearing this story [14] about something I did with a firm in DC years [15] ago. Two weeks before the trial some lawyer [16] said he had somebody that couldn't make it. I [17] said, fine, you got 150 other lawyers, just [18] come for trial.

[19] And they substituted a guy and he [20] actually wound up getting a hung jury in a case [21] that they shouldn't. I guess everybody thought [22] maybe not done that well.

[23] But if you're from a large firm, [24] you know, I have less empathy for giving you

a

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[1] tougher schedule than if you're a couple of [2] people. So knowing that, you know, it will be [3] a tough schedule, but it will accomplish where [4] you both want to be.

[5] Anything else? [6] Thank you very much.

[7] (Hearing concluded at 3:24 p.m.)

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State of Delaware)

New Castle County)

CERTIFICATE OF REPORTER

I, Stacy L. Vickers, Registered

Professional Reporter and Notary Public, do hereby certify that the foregoing record is a true and accurate transcript of my stenographic notes taken on November 16, 2005, in the above-captioned matter IN WITNESS WHEREOF, I have hereunto set my hand and seal this 17th day of January, 2006, at Wilmington

Stacy L. Vickers, RPR

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[1] thing for you. Because obviously whatever I do [2] is arbitrate and I don't know as much about [3] your case as you do, particularly early on like [4] this. [5] If you can't agree, I'd like to [6] hear from you — I'll give you the weekend. [7] I'd like to hear from you Monday by close of [8] business in a letter what your positions are on [9] each option and then I'll select an option from [10] what you tell me your position is if you don't [11] agree. And then we'll get together to nail [12] down what the program is going to be the week [13] after Thanksgiving. [14] I have trial next week, I think. I [15] have a criminal trial next Monday. Right, next [16] Monday. So we would have you come in the week [17] of the 28th and set the schedule, whether it's [18] the preliminary injunction option or the other [19] one.

[20] MR. BONO: Your Honor, I appreciate [21] all Your Honor's efforts. I'm going to be on [22] vacation that week. Can we do it the week [23] after?

[24] THE COURT: Sure. Write that down,

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[1] he's delaying.

[2] MR. BONO: But if it's a problem, I [3] can call in via phone.

[4] THE COURT: Don't dare do that on [5] vacation.

[6] We have some children who are [7] lawyers and the went on vacation and they [8] actually took one of their Blackberry's with [9] them. I just don't understand that. I don't [10] get it. But they do. I know your lives are [11] like that. Vacation is not counted as delay, [12] so you can never raise that.

[13] MS. DUDZIK: I'll keep that in my [14] back pocket.

[15] THE COURT: Keep that in mind in [16] case you want one some time.

[17] We can do it today. That would [18]